

SENATE BILL 2580
By Crowe

AN ACT to amend Tennessee Code Annotated, Section 36-6-101,
relative to child custody orders.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-6-101, is amended by deleting the section in its entirety, and by substituting instead the following language:

(a) The legislature finds and declares that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

At outset and thereafter in any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of the child during minority as may seem necessary or proper.

(b) For the purposes of this section,

(1) "Joint legal" means that the parents or parties share, or shall have voluntarily allocated or the court shall have decreed between them, the decision making rights, responsibilities, and authority relating to the health, education, and welfare of a child.

(2) "Joint physical" means an order awarding each of the parents significant periods of time in which a child resides with or is under the care and supervision of each of the parents or parties. Joint physical custody shall be

shared by the parents in such a way as to assure a child of frequent and continuing contact with both parents.

(3) "Shared parental responsibility" means joint physical and legal custody.

(c) Custody should be awarded in the following order of preference, according to the best interests of the child:

(1) To both parents jointly pursuant to subsection (e).

The court, in its discretion, may require the parents to submit a plan for implementation of the custody order upon finding that both parents are suitable parents, or the parents acting individually or in concert may submit a custody implementation plan to the court prior to issuance of a custody decree.

(2) To either parent.

In making an order for custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and shall not prefer a parent as custodian because of that parent's sex. The burden of proof that shared parental responsibility would not be in a child's best interest shall be upon the parent requesting sole custody.

(3) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(4) To any other person or persons deemed by the court to be suitable and able to provide an adequate and stable environment.

(c) Before the court makes any order awarding custody to a person or persons other than a parent without the consent of the parents, it shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a non parent is required to serve the best interests of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact,

shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

(e) There is a presumption, affecting the burden of proof, that shared parental responsibility is in the best interests of a minor child unless:

(1) the parents have agreed to an award of custody to one (1) parent or so agree in open court at a hearing for the purpose of determining the custody of a minor child of the marriage; or

(2) the court finds that shared parental responsibility would be detrimental to a particular child of a specific marriage.

For the purpose of assisting the court in making a determination whether an award of shared parental responsibility is appropriate, the court may direct that an investigation be conducted.

If the court declines to enter an order awarding shared parental responsibility pursuant to this subsection, the court shall state in its decision the reasons for denial of an award of shared parental responsibility.

(f) An award of joint physical and legal custody obligates the parties to exchange information concerning the health, education, and welfare of the minor child, and unless allocated, apportioned, or decreed, the parents or parties shall confer with one another in the exercise of decision-making rights, responsibilities and authority.

(g) Any order for shared parental responsibility may be modified or terminated upon the petition of one (1) or both parents or on the court's own motion if it is shown that the best interests of the child require modification or termination of the order. The court shall state in its decision the reasons for modification or termination of the shared parental responsibility order if either parent opposes the modification or termination order.

(h) Any order for the custody of a minor child of a marriage entered by a court in this state or in any other state, subject to jurisdictional requirements, may be modified at

any time to an order of shared parental responsibility in accordance with the provisions of this section.

(i) In jurisdictions having a private or publicly-supported conciliation service, the court or the parties may, at any time, pursuant to local rules of court, consult with the conciliation service for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy which has arisen in the implementation of a plan for custody.

(j) Notwithstanding any other provisions of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, and school records, shall not be denied to a parent because the parent is not the child's custodial parent.

(k) One (1) parent may be designated as a caretaker relative in situations where public assistance is deemed necessary and appropriate.

(l) In making an order of shared parental responsibility, the court shall specify the right of each parent to the physical control of the child in sufficient detail to enable a parent deprived of that control to enforce the court order and to enable law enforcement authorities to implement laws for relief concerning custodial interference.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.